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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF
THE SOLAR ALLIANCE FOR A
DECLARATORY ORDER THAT PROVIDERS OF
CERTAIN SOLAR SERVICE AGREEMENTS
WOULD NOT BE PUBLIC SERVICE
CORPORATIONS.

DOCKET NO. E-20633A-08-0513

**TUCSON ELECTRIC POWER
COMPANY AND UNS ELECTRIC,
INC'S RESPONSE TO STAFF
REPORT**

Tucson Electric Power Company and UNS Electric, Inc. (collectively "Companies"), through undersigned counsel, hereby file comments to the Staff Report filed on March 11, 2009. In preparing these comments, the Companies have reviewed the Staff Report in this docket as well as the underlying Application filed by the Solar Alliance.¹

The Companies support the Arizona Corporation Commission's ("Commission") efforts and policy decisions regarding renewable resources. Further, the Companies are very interested in advancing methods that allow the Companies to meet their renewable generation goals in a manner that is cost effective for our customers. However, the Companies cannot agree with the Solar Alliance that companies operating under the solar service agreement ("SSA") business model are not public service corporations and should not be regulated by the Commission. Based on the application filed by the Solar Alliance, it appears that a companies operating under the SSA business model are public service corporations as defined by the Arizona Constitution. Therefore,

¹ Based on statements in the Staff Report, it appears that the Solar Alliance provided additional information in response to Staff data requests. The Companies have not yet requested or reviewed the Solar Alliance data request responses.

1 those companies are subject to regulation by the Commission. The Companies believe that the
2 appropriate level of regulatory oversight is largely a policy issue to be addressed by the
3 Commission. The resolution of the necessary level of regulatory oversight on issues such as rates
4 and consumer protection depends on a full understanding of the SSA business model.

5 The Companies agree with Commission Staff that a hearing in this matter is would be
6 helpful, particularly with respect to developing appropriate regulatory oversight that balances the
7 interests of Arizona ratepayers and utilities with the potential benefits of distributed solar
8 photovoltaic systems procured through the SSA business model.

9 **A. SSA Providers as Public Service Corporations.**

10 Article 15, section 2 of the Arizona Constitution provides that "All corporations other than
11 municipal engaged in furnishing . . . electricity for light, fuel or power . . . shall be deemed public
12 service corporations." Based on the characteristics of the SSA model set forth in the Application,
13 a SSA provider is a public service corporation ("PSC"). As set forth in the Application (at 7), a
14 SSA provider "owns, maintains and operates a solar PV facility" on a "customer's premises." The
15 customer purchases the full power output from the PV facility at "agreed upon prices." Those
16 charges are "computed as a price per kWh." Thus, the SSA as an owner of a generation facility is
17 selling electricity from that facility to an end-user customer at a per kWh rate based on how much
18 electricity is being provided to the customer.

19 The primary purpose of SSA providers appears to be generating revenue from the
20 provision of electricity to end user customers -- other services mentioned in the Application appear
21 to be "incidental" to that primary purpose. Indeed, it appears that but for this revenue provision,
22 the SSA provider model would not likely be viable. This reason alone is sufficient for the
23 Commission to find that SSA providers are PSCs. However, the Commission could cite to several
24 other factors that indicate SSA provides are PSCs whose operation can affect the public interest.
25 For instance, SSA providers are connected to the "public" electric grid and could have significant
26 impacts on the system if not operated and maintained properly. Further, SSA providers are not
27 planning to serve a narrow market segment. Rather, a successful SSA would provide electricity at

1 numerous locations affecting many Arizona ratepayers. Therefore, sufficient Commission
2 oversight would be necessary in order to protect the public interest. Moreover, there is
3 uncertainty, as noted in the Staff Report, and potential dispute over the statements made by the
4 Solar Alliance in its application. Thus, an evidentiary hearing would greatly assist the
5 Commission in addressing these issues.

6 **B. Potential Scope of Regulation.**

7 Although SSA providers are PSCs under the Arizona Constitution, the nature of their
8 services does not necessarily require full regulatory oversight similar to that for monopoly
9 providers. Certain characteristics of the SSA model, however, suggest that some level of
10 Commission oversight would be in the public interest. For example, the SSA provider is
11 responsible for operating and maintaining the PV facilities. The Commission may want to ensure
12 that a SSA provider has the financial ability to meet that obligation over time. The Commission
13 also may want to provide consumers with a forum for issues regarding operation, maintenance and
14 other services without having to have ratepayers file a complaint in a court of law. The various
15 SSA provider characteristics set forth in the Application also present a confusing mix of
16 statements concerning customer charges and services. The Commission may want to ensure
17 sufficient transparency for the actual costs to consumers and to provide a forum for billing
18 disputes or other customer service complaints.

19 The Commission has relaxed regulation for certain types of PSCs, such as customer-owned
20 pay telephone providers (as noted in the Staff Report). Similar relaxed regulation could be
21 developed for SSA providers.

22 The Commission also may want to determine how the SSA provider model can be
23 integrated with its REST rules, Net Metering rules and the IRP rules that are under review. Those
24 rules reflect important Commission policies that need to be harmonized with the SSA provider
25 model. For example, a customer must purchase all of the electricity generated by the SSA facility
26 and can credit any excess against charges from the incumbent electric utility. However, qualifying
27 Net Metering facilities cannot exceed 125% of customer load. It would be important that an SSA

1 facility comport with that provision so that the customer can, in fact, receive credit for all excess
2 electricity it is buying from the SSA provider.

3 An evidentiary hearing would allow the development of a fuller understanding of the
4 appropriate scope of regulation for SSA providers and how that regulation can best be integrated
5 with existing Commission rules and policies.

6 **C. Need for an Evidentiary Hearing.**

7 A reading of the Staff Report reveals significant uncertainty on numerous elements of the
8 SSA provider business model. As discussed above, an evidentiary hearing should provide a full
9 opportunity to determine the appropriate scope of Commission oversight of SSA providers.

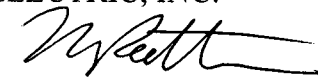
10 **D. Conclusion.**

11 For the reasons set forth above, the Companies support Commission Staff's
12 recommendation that a hearing be held on the Solar Alliance application.

13
14 RESPECTFULLY SUBMITTED this 17th day of April 2009.

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